COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 20, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the CASE NO. PUE-2002-00174

STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning
the aggregation of retail electric customers
under the provisions of the
Virginia Electric Utility Restructuring Act

ORDER REQUESTING COMMENTS

By Order dated March 18, 2002, the Virginia State Corporation Commission ("Commission") established an investigation for the purpose of developing and refining policies, rules, and regulations for the provision of aggregation service. Three areas of inquiry were identified: (i) licensing of aggregators, (ii) contractual relationships between aggregators and their customers (and also as between aggregators and suppliers or other aggregators), and (iii) the impact of incumbent electric utilities' relationships with their aggregator affiliates on the development of effective competition within the Commonwealth.

The Commission directed the Staff of the Commission ("Staff ") to conduct the investigation with input from a working group ("Work Group") comprised of interested parties and stakeholders, and previously assembled in the Commission's proceeding that developed proposed rules governing retail access to competitive energy services.[1] Additionally, the Commission directed that, on or before August 1, 2002, the Commission Staff should file a report detailing the results of its investigation, together with any proposed changes to the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access

[1] Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules for retail access, Case No. PUE0100013 (Commission Order adopting rules entered on June 19, 2001).

Rules") 20 VAC 5-312-10 et seq. On August 1, 2002, the Staff filed its report ("Report") outlining the issues examined in the course of its investigation directed by the Commission.

The Report states, *inter alia,* that the Staff and Work Group discussed a proposal to clarify the definition of aggregator in § 56-576 by removing references to purchasing or offering to purchase electricity as falling within the scope of aggregation activity. Some Work Group participants said this language might cause distribution companies to subject aggregators completely uninvolved in the purchase of electricity to the complete competitive supplier registration processing, including those relating to financial security and electronic data transfer. The Staff, however, has not recommended amending the statute as proposed, noting that 20 VAC 5-312-20 A of the Commission's Retail Access Rules enable persons seeking aggregator licensure to request waivers. The Staff concludes that the waiver process is a more appropriate means of fine-tuning a license applicant's obligations vis-à-vis distribution companies.

The Report also reviews the question of aggregator licensing under § 56-588 for those persons engaged solely in marketing activities on behalf of licensed aggregators or suppliers. For example, trade associations might conduct marketing activities on behalf of licensed suppliers or aggregators, and receive compensation for those activities from these suppliers or aggregators. This scenario presents the following question: does the Restructuring Act require these trade associations (or others like them) to be licensed as aggregators? The Report notes that the Work Group and Staff reviewed this question thoroughly. Guided by the definition of aggregator in § 56-576 of the Restructuring Act, the Staff has concluded that licensing should not be required under such circumstances.

In support of that conclusion, the Staff makes a distinction in its Report between those persons *promoting* a provider of competitive services, and those actually *providing* those services (whether it be as suppliers or as aggregators), noting that such a distinction results from a sensible construction of §§ 56-576 and 56-588 of the Restructuring Act. Accordingly, the Staff believes that legislation is not required to leave marketing activities *on behalf of* aggregators or

suppliers outside the aggregator licensing scheme.[2] However, the Staff has recommended that 20 VAC 5-312-20 D of the Retail Access Rules be amended to require licensed suppliers and aggregators to maintain information in their books and records identifying persons or entities with whom they have marketing relationships. This requirement, in Staff's view, would assist the Commission in carrying out its responsibilities under § 56-593 of the Restructuring Act with respect to deceptive or unfair marketing practices (see footnote 2).

The Staff's Report also reviews several other proposals that were discussed by the Work Group, but not recommended by the Staff. These suggestions include a proposal to establish two levels of licensure for aggregators, establishing a lower level of licensure with reduced filing obligations and filing fees. Closely related to this suggestion, was an additional proposal to require licensure for some aggregators and not for others. The Report also notes that the Restructuring Act's current provisions concerning "opt in" municipal aggregation (§ 56-589) were discussed by the Work Group, but no changes were suggested at this time by any members of the Work Group. The Staff also made no recommendations concerning municipal aggregation.

Finally, the Commission Staff and Work Group reviewed the issue of contractual relationships between aggregators and their customers (and also as between aggregators and suppliers or other aggregators). The Staff made no recommendations for new consumer protection provisions to be incorporated into aggregation contracts, i.e., provisions that would be over and above those contractual requirements presently imposed by the Retail Access Rules for both suppliers and aggregators. Additionally, the Staff and Work Group reviewed the issue of aggregation by entities affiliated with incumbent electric utilities, and the impact of that relationship—one currently authorized by the Restructuring Act—on the development of

[2] The Staff does note, however, that licensed aggregator and suppliers are responsible for marketing activities conducted on their behalf by third parties, to the extent that these activities resulted in harm to the public. Such responsibility would be enforced, in the Staff's view, through the provisions of § 56-593—the Restructuring Act's provisions prescribing remedies for "any deceptive or unfair practices in providing, distributing or *marketing* electric service." (emphasis added)

effective competition within the Commonwealth. No changes in this area were recommended by the Work Group or by the Staff.

In consideration of the foregoing, the Commission is of the opinion that the parties should have an opportunity to file comments on the Staff Report and its recommendations.

Accordingly, IT IS ORDERED THAT:

(1) On or before October 8, 2002, interested parties may file with the Clerk of the Commission comments in response to the Staff, its observations and recommendations.

(2) This matter is continued for further orders of the Commission.